



February 2, 2004

HOUSE BILL No. 1282

DIGEST OF HB 1282 (Updated February 2, 2004 10:59 am - DI 51)

Citations Affected: IC 6-9.

Synopsis: RTA food and beverage tax. Authorizes a county that has established a regional transportation authority (RTA) to impose a 1% food and beverage tax to fund the authority. Restricts the use of the revenue to providing new and improved public transportation services in the county imposing the tax. Requires a unit in a county imposing the tax to continue its current level of financial support of public transportation services after the tax is imposed.

Effective: July 1, 2004.

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January 15, 2004, read first time and referred to Committee on Ways and Means.
January 29, 2004, reported — Do Pass.
February 2, 2004, committee report of January 29, 2004, withdrawn; amended,
reported — Do Pass.

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HB 1282—LS 7102/DI 103+



February 2, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1282

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-9-35 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]:
4 **Chapter 35. Regional Transportation Authority Food and**
5 **Beverage Tax**
6 **Sec. 1. This chapter applies to a county that has established a**
7 **regional transportation authority under IC 36-9-3-2.**
8 **Sec. 2. As used in this chapter, "authority" refers to a regional**
9 **transportation authority under IC 36-9-3-2.**
10 **Sec. 3. As used in this chapter, "beverage" includes any**
11 **alcoholic beverage.**
12 **Sec. 4. As used in this chapter, "commuter transportation**
13 **district" refers to a commuter transportation district established**
14 **under IC 8-5-15.**
15 **Sec. 5. As used in this chapter, "food" includes any food**
16 **product.**
17 **Sec. 6. As used in this chapter, "fund" refers to a food and**

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1 beverage tax receipts fund established under section 16 of this
2 chapter.

3 Sec. 7. As used in this chapter, "gross retail income" has the
4 meaning set forth in IC 6-2.5-1-5.

5 Sec. 8. As used in this chapter, "person" has the meaning set
6 forth in IC 6-2.5-1-3.

7 Sec. 9. As used in this chapter, "retail merchant" has the same
8 meaning set forth in IC 6-2.5-1-8.

9 Sec. 10. As used in this chapter, "unit" refers to a city, town, or
10 county.

11 Sec. 11. (a) The fiscal body of a county may adopt an ordinance
12 to impose an excise tax, known as the regional transportation
13 authority food and beverage tax, on a transaction described in
14 section 12 of this chapter.

15 (b) If a fiscal body adopts an ordinance under subsection (a), it
16 shall immediately send a certified copy of the ordinance to the
17 commissioner of the department of state revenue.

18 (c) If a fiscal body adopts an ordinance under subsection (a), the
19 regional transportation authority food and beverage tax applies to
20 transactions that occur after the last day of the month that
21 succeeds the month in which the ordinance was adopted.

22 Sec. 12. (a) Except as provided in subsection (c), a tax imposed
23 under section 11 of this chapter applies to any transaction in which
24 food or beverage is furnished, prepared, or served:

25 (1) for consumption at a location or on equipment provided by
26 a retail merchant;

27 (2) in the county in which the tax is imposed; and

28 (3) by a retail merchant for consideration.

29 (b) Transactions described in subsection (a)(1) include
30 transactions in which food or beverage is:

31 (1) served by a retail merchant off the merchant's premises;

32 (2) food sold in a heated state or heated by a retail merchant;

33 (3) two (2) or more food ingredients mixed or combined by a
34 retail merchant for sale as a single item (other than food that
35 is only cut, repackaged, or pasteurized by the seller, and eggs,
36 fish, meat, poultry, and foods containing these raw animal
37 foods requiring cooking by the consumer as recommended by
38 the federal Food and Drug Administration in chapter 3,
39 subpart 3-401.11 of its Food Code so as to prevent food borne
40 illnesses); or

41 (4) food sold with eating utensils provided by a retail
42 merchant, including plates, knives, forks, spoons, glasses,

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1 cups, napkins, or straws (for purposes of this subdivision, a
2 plate does not include a container or packaging used to
3 transport the food).

4 (c) A food and beverage tax imposed under this chapter does not
5 apply to furnishing, preparing, or serving any food or beverage in
6 a transaction that is exempt or to the extent the transaction is
7 exempt from the state gross retail tax imposed under IC 6-2.5.

8 Sec. 13. The tax imposed on a transaction described in section
9 12 of this chapter equals one percent (1%) of the gross retail
10 income received by the merchant from the transaction. For
11 purposes of this chapter, the gross retail income received by the
12 retail merchant from such a transaction does not include the
13 amount of tax imposed on the transaction under IC 6-2.5.

14 Sec. 14. The tax that may be imposed under this chapter shall be
15 imposed, paid, and collected in the same manner that the state
16 gross retail tax is imposed, paid, and collected under IC 6-2.5.
17 However, the return to be filed for the payment of the tax may be
18 made on separate returns or may be combined with the return filed
19 for the payment of the state gross retail tax, as prescribed by the
20 department of state revenue.

21 Sec. 15. The treasurer of state shall pay monthly the amounts
22 received from the tax imposed under this chapter to the regional
23 transportation authority established in the county upon warrants
24 issued by the auditor of state.

25 Sec. 16. (a) If a tax is imposed under section 11 of this chapter,
26 the authority shall establish a food and beverage tax receipts fund.

27 (b) The authority shall deposit in the fund all amounts received
28 under this chapter.

29 (c) Any money earned from the investment of money in the fund
30 becomes a part of the fund.

31 (d) Money in the fund may be used only for the purposes
32 described in sections 17 and 18 of this chapter.

33 Sec. 17. (a) Money in the fund may be used only for the purpose
34 of establishing and maintaining new or improved public
35 transportation service in the county imposing the tax that exceeds
36 the level of public transportation service available in the county in
37 2004.

38 (b) Subject to subsection (a), the expenditures for which money
39 in the fund may be used include the following:

40 (1) Grants to units in the county imposing the tax to provide
41 new or improved public transportation service.

42 (2) The costs of preparing plans, specifications, studies,

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surveys, and estimates of cost and of revenue for public transportation services.

(3) Any expense necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of providing public transportation services.

(4) The cost of purchasing, leasing, subleasing, or otherwise acquiring, erecting, constructing, remodeling, renovating, completing, equipping, and furnishing any property.

(5) The cost of engaging architectural services, engineering services, legal services, incidental expenses, financing costs, underwriter's discounts, funded or capitalized interest, municipal bond insurance premiums, or debt service reserve funds related to the issuance of debt obligations.

(6) The payment of debt service.

(7) Operation and management of property.

(8) Other administration expenses of the authority.

(c) Money in the fund may not be used to provide tax relief to any person or to reduce the ad valorem property levies imposed by any governmental entity. For purposes of computing the ad valorem property tax levy limit imposed on a unit under IC 6-1.1-18.5-3, the unit's ad valorem property tax levy for a particular calendar year does not include any part of a grant provided to the unit under this chapter.

Sec. 18. (a) The authority shall establish a reserve account in the fund.

(b) The authority shall deposit in the reserve account:

(1) two million dollars (\$2,000,000) in each of the first two (2) years in which the authority receives tax revenue under this chapter; and

(2) one million dollars (\$1,000,000) in each year thereafter.

(c) Subject to subsection (e), in each of the first two (2) years in which the authority receives tax revenue under this chapter, the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the payment of the costs of:

(1) the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue for; and

(2) all other expenses necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of;

a new rail corridor, designated by the authority, in the county imposing the tax. To the maximum extent possible the money must

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be used to match federal money available to pay for the costs described in this subsection.

(d) Subject to subsection (e), each year the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the commuter transportation district to make capital expenditures for new or improved public transportation service that primarily benefits the county imposing the tax. Money transferred under this subsection may not be used to reduce or replace expenditures made in the county by the commuter transportation district from other sources.

(e) The authority may transfer money during a year in the amounts and at the times determined by the authority. Before the authority transfers money under subsection (c) or (d), the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The plan or amended plan must specify the nature and the amount of proposed expenditures from the money transferred under this section. Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan.

(f) A commuter transportation district may submit a plan or amended plan to the authority not more than once each month. The authority must review a submitted plan or amended plan as soon as practicable after its submission.

(g) If insufficient money is deposited in the fund to comply with subsection (b), the authority shall make the deposits as soon as practicable after sufficient money becomes available to make the required deposits.

(h) If a commuter transportation district is unable in any year to use the full amount of a transfer authorized under subsection (c) or (d), the unexpended amount remains available for transfer to the commuter transportation district when the commuter transportation district is able to expend the money in conformity with the purposes of the transfer.

Sec. 19. (a) This section applies to a unit that is located in a county that imposes a tax under this chapter and that in 2004:

- (1) imposed an ad valorem property tax levy; or
- (2) expended money from an ad valorem property tax levy; for public transportation purposes.

(b) In any year in which a tax is imposed under this chapter, a

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1 unit may not reduce its ad valorem property tax levy or
2 expenditures for public transportation purposes below the amount
3 necessary to maintain a level of public transportation service
4 equivalent to the level of public transportation service provided in
5 2004, as determined by the authority.

6 (c) The unit shall make a good faith effort to obtain all available
7 federal funding to maintain public transportation services at a
8 level at least equivalent to the public transportation services
9 available in 2004.

10 (d) The department of local government finance shall modify
11 budgets, tax rates, and tax levies under IC 6-1.1-17-16, as
12 necessary, to implement this subsection.

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HOUSE MOTION

Mr. Speaker: I move that the committee report for House Bill 1282, adopted by the House, be withdrawn from further consideration because it does not accurately report the actions taken by the House Ways and Means Committee.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1282, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 8 through 9, begin a new paragraph and insert:

"Sec. 2. As used in this chapter, "authority" refers to a regional transportation authority under IC 36-9-3-2.

Sec. 3. As used in this chapter, "beverage" includes any alcoholic beverage.

Sec. 4. As used in this chapter, "commuter transportation district" refers to a commuter transportation district established under IC 8-5-15.

Sec. 5. As used in this chapter, "food" includes any food product.

Sec. 6. As used in this chapter, "fund" refers to a food and beverage tax receipts fund established under section 16 of this chapter.

Sec. 7. As used in this chapter, "gross retail income" has the meaning set forth in IC 6-2.5-1-5.

Sec. 8. As used in this chapter, "person" has the meaning set forth in IC 6-2.5-1-3.

Sec. 9. As used in this chapter, "retail merchant" has the same meaning set forth in IC 6-2.5-1-8.

Sec. 10. As used in this chapter, "unit" refers to a city, town, or county."

Page 1, line 10, delete "3" and insert "**11**".

Page 1, line 13, delete "4" and insert "**12**".

Page 2, line 4, delete "4" and insert "**12**".

Page 2, line 5, delete "3" and insert "**11**".

Page 2, line 32, delete "5" and insert "**13**".

Page 2, line 32, delete "4" and insert "**12**".

Page 2, line 38, delete "6" and insert "**14**".

Page 3, line 3, delete "7" and insert "**15**".

Page 3, line 7, delete "8" and insert "**16**".

Page 3, line 7, delete "3" and insert "**11**".

Page 3, line 8, delete "regional transportation".

Page 3, line 10, delete "food and beverage tax".

Page 3, line 11, delete "receipts".

Page 3, line 12, delete "food".

Page 3, line 13, delete "and beverage tax receipts".

Page 3, line 14, delete "food and beverage tax receipts".

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Page 3, line 14, delete "shall be" and insert "**may be used only for the purposes described in sections 17 and 18 of this chapter.**".

Page 3, delete lines 15 through 17, begin a new paragraph and insert:

"Sec. 17. (a) Money in the fund may be used only for the purpose of establishing and maintaining new or improved public transportation service in the county imposing the tax that exceeds the level of public transportation service available in the county in 2004.

(b) Subject to subsection (a), the expenditures for which money in the fund may be used include the following:

- (1) Grants to units in the county imposing the tax to provide new or improved public transportation service.**
- (2) The costs of preparing plans, specifications, studies, surveys, and estimates of cost and of revenue for public transportation services.**
- (3) Any expense necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of providing public transportation services.**
- (4) The cost of purchasing, leasing, subleasing, or otherwise acquiring, erecting, constructing, remodeling, renovating, completing, equipping, and furnishing any property.**
- (5) The cost of engaging architectural services, engineering services, legal services, incidental expenses, financing costs, underwriter's discounts, funded or capitalized interest, municipal bond insurance premiums, or debt service reserve funds related to the issuance of debt obligations.**
- (6) The payment of debt service.**
- (7) Operation and management of property.**
- (8) Other administration expenses of the authority.**

(c) Money in the fund may not be used to provide tax relief to any person or to reduce the ad valorem property levies imposed by any governmental entity. For purposes of computing the ad valorem property tax levy limit imposed on a unit under IC 6-1.1-18.5-3, the unit's ad valorem property tax levy for a particular calendar year does not include any part of a grant provided to the unit under this chapter.

Sec. 18. (a) The authority shall establish a reserve account in the fund.

(b) The authority shall deposit in the reserve account:

- (1) two million dollars (\$2,000,000) in each of the first two (2) years in which the authority receives tax revenue under this**

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chapter; and

(2) one million dollars (\$1,000,000) in each year thereafter.

(c) Subject to subsection (e), in each of the first two (2) years in which the authority receives tax revenue under this chapter, the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the payment of the costs of:

(1) the preparation of plans, specifications, studies, surveys, and estimates of cost and of revenue for; and

(2) all other expenses necessary or incident to planning, providing, or determining the need for or the feasibility and practicability of;

a new rail corridor, designated by the authority, in the county imposing the tax. To the maximum extent possible the money must be used to match federal money available to pay for the costs described in this subsection.

(d) Subject to subsection (e), each year the authority shall transfer one million dollars (\$1,000,000) from the reserve account in the fund to a commuter transportation district for the commuter transportation district to make capital expenditures for new or improved public transportation service that primarily benefits the county imposing the tax. Money transferred under this subsection may not be used to reduce or replace expenditures made in the county by the commuter transportation district from other sources.

(e) The authority may transfer money during a year in the amounts and at the times determined by the authority. Before the authority transfers money under subsection (c) or (d), the commuter transportation district must submit a written plan or amended plan to the authority for its review. The authority shall prescribe the format for plans and amended plans. The plan or amended plan must specify the nature and the amount of proposed expenditures from the money transferred under this section. Money transferred under this section may not be used for any purpose other than the purposes specified in the plan or amended plan.

(f) A commuter transportation district may submit a plan or amended plan to the authority not more than once each month. The authority must review a submitted plan or amended plan as soon as practicable after its submission.

(g) If insufficient money is deposited in the fund to comply with subsection (b), the authority shall make the deposits as soon as

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practicable after sufficient money becomes available to make the required deposits.

(h) If a commuter transportation district is unable in any year to use the full amount of a transfer authorized under subsection (c) or (d), the unexpended amount remains available for transfer to the commuter transportation district when the commuter transportation district is able to expend the money in conformity with the purposes of the transfer.

Sec. 19. (a) This section applies to a unit that is located in a county that imposes a tax under this chapter and that in 2004:

- (1) imposed an ad valorem property tax levy; or
- (2) expended money from an ad valorem property tax levy; for public transportation purposes.

(b) In any year in which a tax is imposed under this chapter, a unit may not reduce its ad valorem property tax levy or expenditures for public transportation purposes below the amount necessary to maintain a level of public transportation service equivalent to the level of public transportation service provided in 2004, as determined by the authority.

(c) The unit shall make a good faith effort to obtain all available federal funding to maintain public transportation services at a level at least equivalent to the public transportation services available in 2004.

(d) The department of local government finance shall modify budgets, tax rates, and tax levies under IC 6-1.1-17-16, as necessary, to implement this subsection."

and when so amended that said bill do pass.

(Reference is to HB 1282 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 19, nays 7.

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